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IN THE

Supreme Court of the United States

OCTOBER TERM, 1969

No. 568

J. E. WILSON,
Petitioner,

vs.

STATE BAR OF GEORGIA, et al.,
Respondents.

Petition For A Writ Of Certiorari To The Supreme Court Of Georgia

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

J. E. WILSON petitions this Court for a writ of certiorari to review the judgment and opinion of the Supreme Court of Georgia on the 22nd of May, 1969, and the court's refusal to grant a rehearing on June 12, 1969.

OPINIONS BELOW

The opinion and judgment of the Supreme Court of Georgia have been reported as 225 Ga. 343. Said opinion is appended hereto (Appendix).

JURISDICTION

The judgment of the Supreme Court of Georgia was dated and entered May 22, 1969, a motion for rehearing was timely filed and said motion for rehearing was denied by the Georgia Supreme Court on June 12, 1969. The jurisdiction of this court is invoked under 28 U.S.C. 1257 (3) since a right, privilege and immunity is specially claimed under the Constitution of the United States.

QUESTION PRESENTED FOR REVIEW

The question presented for review is whether or not it is due process of law for a State Bar Association to legislate its own laws and then cite an attorney for disbarment and require the attorney, when he claims some of the rules and laws enacted by the Corporate Bar Association are unconstitutional and violate his constitutional rights conferred by the Fifth and Fourteenth Amendments to the U.S. Constitution, to appear before said Bar Association and let them rule whether or not their laws are constitutional, and then to show cause before them why he should not be tried and disbarred for violating their laws which are reported in 219 Ga. 873-917.

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment Five of the Constitution of the United States provides:

> "No person shall be * * * deprived of life, liberty, or property, without due process of law."

Amendment Fourteen of the Constitution of the United States provides:

"No state * * * shall deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF CASE

J. E. Wilson, plaintiff, filed the complaint with three counts therein and in count one alleged that he is an attorney licensed to practice law in Georgia, and that he is a member of the State Bar of Georgia, and a resident of DeKalb County as well as a citizen of Georgia and the United States. He sued the State Bar of Georgia, Archer D. Smith III, as associate counsel of the Bar, and members of Grievance Tribunal No. 4 consisting of LARRY W. THOMASON, WILLIAM A. HAMILTON and JOHN C. HUNTER. Petitioner averred he had a notice from Tribunal No. 4 of the Bar that a hearing was to take place for the purpose of determining existence or non-existence of probable cause for lodging of a formal complaint against petitioner, and that a notice to produce privileged documents and records at said hearing was served on petitioner and his counsel, and that some of said information was privileged communications between attorney and client, and also if he were required to produce these documents it would violate the self-incrimination provisions of the Fifth Amendment which applied through the Fourteenth Amendment to the States. Petitioner is charged with larceny after trust in that he allegedly fraudulently retained monies belonging to two of his clients in violation of trust and other charges.

Petitioner alleged that he is required by the notice to produce to bring in files on people other than those filing a complaint with the Grievance Committee. Petitioner asked that the court quash the notice to produce.

In Count 2, plaintiff adopted everything from Count 1, and added that Rule 4-215, subparagraph B of the Rules and Regulations of the State Bar of Georgia is illegal, null and

void and contrary to Article V, Sec. 1 of the Constitution of the United States because said rule violates the constitutional privilege against self-incrimination. Plaintiff asked the court to rule said Rule 4-215, subparagraph B unconstitutional, null and void.

Plaintiff averred unless defendants were restrained he would suffer irreparable damage because he would have to go to trial without the constitutional privilege against self-incrimination and also if he failed to appear and produce all documents called for the *Rule provides that it is mandatory for the Superior Court to arrest petitioner and confine him to jail in violation of Article XIV, Sec. 1* of the U.S. Constitution and deprives him of liberty without due process of law.

Count 3 adopts everything from Counts 1 and 2 and plaintiff moved to quash the notice to produce and subpoena because it requires petitioner to disclose confidential communications between attorney and client in violation of Sec. 38-419 of the laws of Georgia, Ga. Code Annotated, and Sec. 9-601 (3) of the Ga. Code Annotated.

There is a prayer for service, for restraint ex parte and for a rule nisi for temporarily and permanently restraining defendants from further prosecuting the case against petitioner, that Rule 4-215, subparagraph B of Rules of Georgia Bar be ruled unconstitutional, that the subpoena and notice to produce be quashed and declared a nullity.

The Supreme Court of Georgia held against petitioner and denied his motion for rehearing (Appendix) with three justices dissenting, but without opinion.

MANNER OF RAISING FEDERAL QUESTION

Petitioner filed a three-count complaint in DeKalb Superior Court and claimed that his rights under the Fifth and Fourteenth Amendments were being deprived because he was

to appear before a tribunal of the State Bar and produce certain documents in accordance with a notice to produce and subpoena and this could deprive him of his rights against self-incrimination and also require him to reveal confidential communications of his clients.

He alleged certain rules (laws) enacted by the defendant corporation were unconstitutional and violated the Fifth and Fourteenth Amendments, and claimed that for the Bar Association to hear and determine this matter is not due process of law. He asked the court to rule that the notice to produce and subpoena be quashed.

Enumeration of Error No. 2 also raises the federal question as to the constitutionality of certain rules enacted by the defendant association.

SUMMARY OF REASONS FOR ALLOWANCE OF WRIT

1.

The decision of the Georgia Supreme Court is contrary to the Fifth and Fourteenth Amendments to the U.S. Constitution.

2.

Under Georgia Law, the decision will become the law of the case and petitioner will then have to submit to the tribunal for a hearing and he will be deprived of due process of law.

3.

The question involved is of gravity and importance to all attorneys and others who may be called upon to answer to laws made by a corporation, firm, or entity to appear before the organization for trial and possibly execution or other punishment for violating these self-made laws.

ARGUMENT OF REASONS FOR ALLOWANCE OF WRIT

1.

If an association can legislate its own laws and then cite persons to appear before its own tribunal to answer charges and if said association can decide whether or not its own laws are constitutional and whether or not cause exists, we could have numerous kangaroo courts to enforce laws made by the courts and decided by the courts and this is certainly unconstitutional.

There can be no due process when a party decides if the defendant or the party is right, and also decides if its laws are constitutional.

Disbarment is a punishment or penalty imposed on the lawyer.

Ex parte Garland, 4 Wall 333
Spevak v. Klein, 385 U.S. 511

He is accordingly entitled to due process.

Re Oliver, 333 U.S. 257, 273
Re Ruffalo, 390 U.S. 544 (b)

The failure to accord an accused a fair hearing violates even the minimal standards of due process.

Re Oliver, 333 U.S. 257
Tuney v. Ohio, 273 U.S. 510

A fair trial in a fair tribunal is a basic requirement of due process.

Re Murchison, 349 U.S. 133, 136

How can petitioner receive a fair hearing when the tribunal is the legislator, judge; jury, prosecutor and executioner?

2.

The decision will become the law of the case under Georgia Law and the association will then judicially determine this matter and will pass on the constitutionality of its own self-made laws.

3.

This is of extreme importance to everyone. If this trend is allowed, all barbers, doctors, dentists, butchers, bakers, plumbers, carpenters, etc., will have their own association enacting laws and deciding if a violation was incurred and they could set up punishment even to the point of executing people. This is certainly illegal and unconstitutional.

CONCLUSION

Unless we are to allow each and every organization, partnership, firm or corporation to enact its own laws and then enforce them, we must stop this. Our constitution will only be a scrap of paper with no meaning if this is allowed to reach its ultimate conclusion.

The judgment of the Georgia Supreme Court should be vacated and the case remanded to the lower court for hearing evidence.

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Hapeville, Georgia 30354

CERTIFICATE OF SERVICE

I, ROLAND R. HARTSHORN, a member of the Bar of the U.S. Supreme Court and counsel for petitioner in the within case, do hereby certify that I have this day served copies of the application for Writ of Certiorari upon counsel of record for the Georgia Bar Association and of the other defendants by depositing in the U.S. Mail with sufficient postage for first-class prepaid mail one copy each to Mr. Alexander Cocalis, First National Bank Building, Atlanta, Georgia, Mr. Mallory C. Atkinson, 813 Person Building, Macon, Georgia, and to Honorable Arthur Bolton, Attorney General, c/o State Judicial Building, Atlanta, Georgia, counsel for the State of Georgia.

This ____ day of _____, 1969.

_____

Roland R. Hartshorn

IN THE SUPREME COURT FOR THE STATE OF GEORGIA

J. E. WILSON, *Appellant,*	)	
vs.	)	No. 25191
STATE BAR OF GEORGIA, et al., *Appellees.*	)	

MOTION FOR REHEARING

Now comes J. E. WILSON, Appellant, and files this Motion for Rehearing and requests that the Court reconsider its ruling denying the appeal and affirming the decision of the lower Court.

This Court ruled that Appellant has an adequate remedy at law and is therefore not entitled to the extraordinary relief of injunction. There can not be an adequate remedy at law unless plaintiff can receive a fair trial in a fair tribunal, and there can be no fair hearing when the prosecutor is an integral part of the court and the court is allowed to rule whether it (and its prosecutor) are correct or the opposite party is correct. See *In Re Murchison,* 349 U.S. 133, 136. Impartiality is a state of mind. *U.S. v. Wood,* 299 U.S. 123, 145-146. How can one side rule impartially for or against its side? This is unlikely, even with the best and most conscientious attorneys we can use; it is still asking the impossible.

A careful examination of the record *fails to disclose that there is any evidence or testimony or papers showing that plaintiff has an adequate remedy at law.* This court is not authorized to take judicial cognizance of such a contention. There is no testimony or anything in the record to authorize such a decision and *it is therefore clearly erroneous.*

This court also ruled that the court properly dismissed the complaint for failure to state a claim upon which relief can be granted. This court may have overlooked the fact that plaintiff filed three counts and not just one. *A claim should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in support of his claim which would entitle him to relief* inasmuch as a complaint merely provides notice of a claim and parties have liberal opportunities for discovery to disclose the basis of both claim and defense. See *Edwin H. Friend v. Gen. Motors Corp. et al., Margaret Friend v. Gen. Motors Corp. et al.*, 118 Ga. App. 763 (165 S.E. 2d 734, 735 [4]); *Conley v. Gibson*, 355 U.S. 41, 45. It is impossible to say *beyond doubt* that plaintiff cannot prove facts which would authorize him to prevail.

Appellant should not be required to resist the illegal and unconstitutional rules and possibly go to jail in order to ask for relief. A hearing in the Superior Court would have brought out the testimony and it would have been ruled on in that court *before* any other hearing took place. Why should it be necessary to have a hearing before the tribunal and if the Appellant is jailed then and only then to be allowed to ask for help?

Appellant is asking for this court to reconsider this case and to grant a rehearing.

The Appellant respectfully submits that when the court takes cognizance of the foregoing material, facts, statutes and decisions, it will reach a different decision.

WHEREFORE, the plaintiff-in-error prays that a rehearing be granted and that the court reverse its decision and reverse the trial court's ruling in its entirety.

J. E. Wilson

1001 Virginia Avenue
Hapeville, Georgia 766-1608

IN THE SUPREME COURT FOR THE STATE OF GEORGIA

J. E. WILSON, *Appellant,*	)	
vs.	)	No. 25191
STATE BAR OF GEORGIA, et al., *Appellees.*	)	

CERTIFICATE OF SERVICE

I, J. E. WILSON, Counsel Pro Se, do hereby certify that I have this day served the within and foregoing Motion for Rehearing upon the Attorney General, by depositing a copy thereof in the United States Mail, in an envelope with the proper postage paid, addressed to him in the State Office Building, Atlanta, Georgia.

This 2nd day of June, 1969.

/s/ J. E. Wilson
J. E. Wilson

The above Certificate of Service was served on Mallory C. Atkinson, 813 Person Building, Macon, Georgia, and Alexander Cocalis, First National Bank Building, Atlanta, Georgia, by depositing a copy thereof in the United States Mail, in an envelope with the proper postage paid.

This 2nd day of June, 1969.

/s/ J. E. Wilson
J. E. Wilson

Supreme Court of Georgia Decided MAY 22, 1969

25191. WILSON v. STATE BAR OF GEORGIA et al.

1. Rule 4-215 of the State Bar of Georgia (219 Ga. 911-913) affords the right to resist the production of any documents which would have a tendency to incriminate an attorney under investigation by a Grievance Tribunal, and the rule does not violate the constitutional prohibition against requiring a person to incriminate himself.

2. There is no merit in the contention that the notice to produce should be quashed in this equitable action because it would require the appellant to divulge information related to clients not involved in the investigation, since he may make this objection before the Grievance Tribunal.

3. The appellant has an adequate remedy at law, and he is not entitled to the extraordinary relief of injunction.

4. The court properly dismissed the complaint for failure to state a claim upon which relief can be granted.

MOBLEY, Justice. J. E. Wilson appeals from the dismissal of his complaint against the State Bar of Georgia, named persons constituting Grievance Tribunal No. 4, an assistant associate counsel for the State Bar of Georgia, and the Attorney General of Georgia, for failure to set forth a claim upon which relief can be granted.

It is alleged that the complainant, who is an attorney licensed to practice law in Georgia and a member of the State Bar of Georgia, received a notice from Grievance Tribunal

No. 4 of the Stone Mountain Judicial Circuit of the State Bar of Georgia that they would conduct a hearing for the purpose of making a determination of the existence or nonexistence of probable cause for the lodging of a formal complaint against him; and that he and his attorney were served with a notice to produce specified records and documents.

The complainant contends that the documents and records should not be produced in the investigation for the following reasons: (a) To require him to produce the records would be a violation of the self-incrimination clause of the Fifth Amendment of the United States Constitution (Code § 1-805), applied to the States through the Fourteenth Amendment (Code § 1-815). (b) The information called for contains confidential and privileged information and communication between attorney and clients, which under the laws of Georgia he cannot be required to produce. (c) The information relates to persons not involved in the investigation. (d) The notice is unreasonable and oppressive. (e) It is unreasonable because it requires voluminous and extensive documents and information not related to the matter under investigation.

It is further contended that Rule 4-215 (b) of the State Bar of Georgia (219 Ga. 912) is illegal, null, void, and contrary to the Fifth Amendment of the United States Constitution, in that it violates the constitutional privilege against self-incrimination. It is asserted that, unless the defendants are restrained and enjoined until Rule 4-215 (b) can be declared null, void, and unconstitutional, the complainant will be irreparably harmed in that he will be required to go to trial without being clothed with the constitutional privilege against self-incrimination; and that he will be additionally irreparably damaged and deprived of his constitutional rights in that this rule provides that if he fails to appear and produce the documents required by the notice to produce, upon the Grievance Tribunal making this informa-

tion known to the superior court, it is mandatory for the court to arrest him and confine him in jail, in violation of the due process clause of the United States Constitution.

The complainant sought temporary and permanent injunction against the defendants proceeding with the case before the Grievance Tribunal; the declaration that Rule 4-215 (b) is null, void, and unconstitutional; and the quashing and dismissal of the notice to produce.

1. An attorney whose professional activities are under investigation by the disciplinary authorities of the State Bar of Georgia is entitled to the protection of the constitutional safeguards of our Federal and State Constitutions against self-incrimination. Courts of other States have held that in similar investigations in their States an attorney is entitled to invoke the rule against self-incrimination. For instance, see: Fish v. State Bar of California, 214 Cal. 215 (4 P.2d 937); In re Halvorson, 175 Minn. 520 (221 N.W. 907); In re Zinn, 38 N.M. 449 (34 P.2d 1097); Florida Bar v. Massfeller, 170 So.2d 834. In the early case of Marshall v. Riley, 7 Ga. 367, this court held that no person can be compelled to answer interrogatories "which would subject him to a penalty or forfeiture or punishment for crime, or have a tendency thereto."

However, there is no merit to the contention that Rule 4-215 (b), authorizing the Grievance Tribunal to compel the production of books, papers, and documents, relevant to the matter under investigation, is unconstitutional. Subsection (f) of Rule 4-215 (219 Ga. 913) provides that "the procedures and rules of evidence applicable in civil cases shall apply except that the quantum of proof required shall be beyond a reasonable doubt." In a civil action under the general law, on timely written motion, the trial judge may quash or modify a subpoena requiring the production of books, papers, documents, or tangible things, if it is unreasonable or oppressive. Ga. L. 1966, p. 502 (Code Ann. § 38-801 [b]). Thus, a

similar motion to quash or modify the notice to produce could be made to the Grievance Tribunal to resist the production of any documents or records which might have the effect of incriminating him.

Neither is there any merit in the contention that Rule 4-125 (b) denies the appellant due process of law by making it mandatory for the court to arrest him and confine him in jail should he fail to produce documents having a tendency to incriminate him. If the appellant refuses to produce the documents ordered, on the ground that they will incriminate him, the Grievance Tribunal would have no right to seek to have him adjudged in contempt of court. Rule 4-125 (b) provides for a hearing before the judge of the superior court on the attachment for contempt. Should the appellant be cited for contempt for failure to produce information tending to incriminate him, he would have ample opportunity at this hearing to assert his constitutional right against self-incrimination.

Since Rule 4-215 provides an opportunity in the investigation before the Grievance Tribunal for the appellant to resist the production of any incriminatory documents specified in the notice to produce, and review by the superior court is afforded him if the Grievance Tribunal should overrule his objections and seek to have him held in contempt of court, Rule 4-125 (b) does not violate the constitutional prohibition against requiring a person to incriminate himself.

2. The appellant asserts that the notice to produce calls for information related to persons other than those involved in the present investigation. As to any confidential information concerning clients not involved in the investigation, it is his privilege to refuse to divulge this information to the Grievance Tribunal. As previously pointed out, he has the right to make his objections to the notice to produce before the Grievance Tribunal, and there is no necessity for the notice to be quashed in this equitable action to insure his

right to keep the secrets of his clients inviolate.

3. The appellant has an adequate remedy at law to resist the production of the documents specified in the notice to produce on the grounds stated in his claim, and he is not entitled to restrain and enjoin the Grievance Tribunal from proceeding with the investigation.

4. The complaint does not set forth a claim upon which any relief can be granted, and it was not error to dismiss it on this ground.

Judgment affirmed. All the Justices concur.